

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Preprint RECOMMENDATION

Enforcement of Judgments Under the Family Code

November 2005

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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CALIFORNIA LAW REVISION COMMISSION

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November 18, 2005

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

The period for enforcement of a money judgment or judgment for possession or sale of property under the Family Code is governed by three different rules:

- (1) A judgment for possession or sale of property is subject to the ten-year enforcement period and renewal procedure provided by the general enforcement of judgments law.
- (2) A judgment for support is enforceable until paid in full and may be renewed to update the amount owed on the judgment.
- (3) A non-support money judgment has no stated time period for enforcement and is not subject to the judgment renewal procedure.

This multiplicity of rules is potentially confusing, especially for the majority of family law litigants who are self-represented. It may also lead to inequitable results, with very similar judgments subject to significantly different enforcement periods.

The proposed law would simplify the law by providing a single rule for the enforcement of any money judgment or judgment for possession or sale of property under the Family Code: the judgment would be enforceable until satisfied in full and could be updated through the existing judgment renewal process.

The proposed law would also delete a provision that limits the methods by which a Family Code judgment may be enforced.

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

Respectfully submitted,

Edmund L. Regalia
Chairperson

ENFORCEMENT OF JUDGMENTS UNDER THE FAMILY CODE

Under the Enforcement of Judgments Law, a money judgment or judgment for possession or sale of property is enforceable for a period of ten years.¹ That period can be extended through renewal of the judgment.²

The ten-year enforcement period and judgment renewal provisions do not apply to a judgment arising under the Family Code, unless the Family Code specifically provides otherwise.³

There are currently three rules governing the period for enforcement of a judgment under the Family Code:

- (1) A judgment for possession or sale of property is subject to the ten-year enforcement period and renewal procedure provided by general enforcement of judgments law.⁴
- (2) A judgment for support is enforceable until paid in full and is not subject to the equitable defense of laches (except as to any part of the judgment that is owed to the state). The judgment may be renewed to update the amount owed on the judgment.⁵
- (3) A non-support money judgment has no stated time period for enforcement and is not subject to the judgment renewal procedure or any exemption from laches.⁶

1. Code Civ. Proc. § 683.020.

2. Code Civ. Proc. §§ 683.110-683.220.

3. Code Civ. Proc. § 683.310.

4. Fam. Code § 291.

5. Fam. Code § 4502.

6. Code Civ. Proc. § 683.020.

This multiplicity of rules is potentially confusing and can lead to inequitable results. A recent appellate decision illustrates the problem. In *Wilcox v. Wilcox*,⁷ a judgment in a marital dissolution awarded the family home to the former husband, but required that he make an equalizing cash payment to his former wife. The award of the house was a judgment for possession of property and was therefore subject to the ten-year enforcement period. The order to make an equalizing cash payment was a money judgment and was therefore not subject to the ten-year enforcement period. This is potentially unfair. While there are differences in the methods by which a money judgment and judgment for possession or sale of property may be enforced, the parties to a marital dissolution probably do not expect significant differences in the enforcement period.

The proposed law would make a judgment under the Family Code enforceable until satisfied. This simple rule would avoid confusion and would be consistent with the general legislative policy favoring the enforcement of Family Code judgments.

DISCUSSION

There are a number of factors that weigh in favor of a simplified rule for enforcement of judgments under the Family Code: (1) family law proceedings can have a profound effect on the economic stability and welfare of former spouses and their dependent children, (2) special pressures in family law cases may delay the enforcement of a judgment, and (3) the unusual prevalence of self-represented litigants in family law cases argues in favor of simplicity in the law. These factors are discussed below.

7. 124 Cal. App. 4th 492, 21 Cal. Rptr. 3d 315 (2004).

Economic Effect of Family Code Judgments

Dissolution or annulment of marriage can have a significant effect on the economic independence of former spouses and the welfare of their dependent children:

In every case, when one household breaks into two, there are losses of economies of scale and a concomitant loss of well-being for all household members. However, this loss is often not equally distributed between the parties. An examination of child poverty statistics shows that children and their custodial parents experience a greater financial loss than noncustodial parents. Child poverty is far more prevalent in single-parent homes. Nearly one in every two children living in single-parent homes lives in poverty compared to nearly one in twelve in two-parent homes.

According to data developed by the Center for Law and Social Policy (CLASP), in California in 1993, 38% of mother-only families and 20% of father-only families were poor. Fully 85% of mother-only families and 39% of father-only families have income less than twice the poverty line.⁸

Concern about the heightened risk of poverty following dissolution of marriage underlies the existing policy in favor of simplified enforcement of a support judgment.⁹ Enforcement of a support judgment helps a former spouse to

8. Letter from Assembly Member Sheila J. Kuehl to Assembly Committee on the Judiciary (November 7, 1995).

9. In addition to the exemption from the general ten-year enforcement period, there have been numerous legislative reforms aimed at facilitating the enforcement of a support judgment. See, e.g., Code Civ. Proc. § 703.070 (exempt property may be applied to satisfaction of support judgment); Fam. Code §§ 4002 (county may proceed on behalf of child support obligee), 4003 (case involving child support has scheduling priority over all cases that are not also given statutory scheduling priority), 4011 (child support obligation has priority over other debts), 5100 (support obligation enforceable by writ of execution or notice of levy without prior court approval), 4720-4733 (civil penalty for child support delinquency), 17520 (suspension of driver's license or business license for child support delinquency).

find his or her feet economically and reduces dependence on public assistance programs.

Other types of Family Code judgments also serve those purposes. An award of marital property can provide resources essential to the transition from married to single life, including funds to pay for vocational training, childcare, insurance coverage, and the procurement of new housing. Other Family Code judgments provide for recovery of costs relating to maternity,¹⁰ domestic violence,¹¹ or breach of a child custody obligation.¹²

If concern about the economic independence and welfare of former spouses and their children justifies a more lenient approach to enforcement of a support order, then it also weighs in favor of the same approach for other types of Family Code judgments.

Special Reasons for Delay in Enforcement

Many civil cases involve an arms-length commercial transaction or a conflict between strangers. Family law cases are different. The parties have a history together that can involve deep bonds of affection, a sense of mutual obligation, and concern for the welfare of children. Family law cases can also involve personal betrayal, enmity, and abuse. This tangle of emotions and connections may persist long after dissolution or annulment of marriage, especially if there is an ongoing obligation of support or shared custody of children.

Unlike the typical lawsuit, where there is likely to be no reason for delay in enforcing a judgment, a family law case may involve justifiable reasons for delay. For example:

10. Fam. Code § 7637.

11. Fam. Code § 6342.

12. Fam. Code § 3028.

- A party may delay enforcement of a judgment in order to avoid conflicts that could undermine the welfare of minor children.
- A party awarded ownership of the family home may allow a former spouse to continue living in the home out of a sense of obligation for the former spouse's welfare.
- A party may feel physically or psychologically intimidated by a former spouse and forego enforcement of a judgment in order to avoid harm. For example, in one case a judgment creditor deferred enforcement of a support order for nearly thirty years, out of fear of a physically abusive former spouse. The court found this delay to be reasonable under the circumstances.¹³ Concern about intimidation of judgment creditors may also underlie the rule providing that the ten-year enforcement period does not apply to a crime victim restitution award.¹⁴

Family law cases present special considerations, absent in most other cases, that can lead to significant delay in the enforcement of a judgment. These considerations are not limited to cases involving enforcement of a support obligation; they can arise in any type of family dispute. To the extent that these causes for delay justify a more lenient approach to enforcement of a support obligation, they also justify a similar approach for other Family Code judgments.

Uniformity and Simplicity

A very high percentage of the parties in family law cases are unrepresented by counsel. One recent study indicated that 67% of marital dissolution cases involve unrepresented parties. By contrast, the rate of self-representation in general

13. *In re Marriage of Dancy*, 82 Cal. App. 4th 1142, 98 Cal. Rptr. 2d 775 (2000).

14. See Penal Code § 1214(d).

civil litigation is 16%.¹⁵ The unusually high rate of self-representation in family law cases argues in favor of uniformity and simplicity in family law procedures, in order to avoid pitfalls for nonlawyers.

The current system of three different rules for enforcement of different types of judgments is potentially confusing. That confusion could be avoided by the creation of a single simplified rule that would apply to all judgments entered under the Family Code.

LACHES

The statutory period for enforcement of a judgment is not the only time-based limitation on enforcement. The equitable defense of laches may also apply.

Laches may be raised as a defense if the delay in enforcement was unreasonable and prejudiced the judgment debtor, such that the granting of the relief requested would be inequitable.¹⁶ Prejudice may arise from a range of circumstances, including detrimental reliance, changed conditions, or the loss of relevant evidence.¹⁷

The absence of a statute of limitations does not preclude the application of laches.¹⁸ Thus, laches has been raised as a

15. Judicial Council, Statewide Action Plan for Serving Self-Represented Litigants 5 (2004).

16. *In re Marriage of Plescia*, 59 Cal. App. 4th 252, 256, 69 Cal. Rptr. 2d 120, 123 (1997).

17. See, e.g., *In re Marriage of Fogarty & Rasbeary*, 78 Cal. App. 4th 1353, 93 Cal. Rptr. 2d 653 (2000) (reasonable belief that obligation satisfied combined with lack of records of payments made was prejudicial); *Plescia*, 59 Cal. App. 4th at 256 (reasonable belief that obligation had been satisfied combined with intervening retirement of judgment debtor was prejudicial); but see *In re Marriage of Dancy*, 82 Cal. App. 4th 1142, 1160, 98 Cal. Rptr. 2d 775, 787-88 (2000) (remarriage and loss of records not sufficient to establish prejudice). See generally 30 Cal. Jur. 3d *Equity* §§ 45-47 (3d ed. 2005).

18. *Plescia*, 59 Cal. App. 4th at 260.

defense to the enforcement of a support judgment despite the fact that a support judgment remains enforceable until paid in full.¹⁹

In general it is appropriate for a court to consider whether unreasonable and prejudicial delay in enforcing a judgment should preclude enforcement on equitable grounds. However, the Legislature has specifically exempted a support judgment from the application of laches (except as to any amount of a judgment that is owed to the state).²⁰ This may reflect, in part, a concern that equitable considerations as between parents should not interfere with the support obligation of a dependent child. “[Child] support is owed to the child rather than the dilatory parent, which strongly militates against the application of laches in the child support context....”²¹

The proposed law would preserve the existing exemption of a support judgment from laches, but would not extend that exemption to other types of Family Code judgments.

DEATH OF JUDGMENT DEBTOR OR CREDITOR

The proposed law would make a judgment under the Family Code enforceable until satisfied. However, this would not supersede general law governing the enforcement of a judgment after the death of a judgment debtor or creditor. This is consistent with a recent appellate decision that stated, in dictum, that Family Code Section 4502 “does not address

19. *Id.*

20. Fam. Code § 4502(c).

21. *In re Marriage of Dancy*, 82 Cal. App. 4th 1142, 1156, 98 Cal. Rptr. 2d 775, 785 (2000).

the procedural requirements for reaching the assets of a judgment debtor after that debtor's death.”²²

The proposed law preserves the careful balance struck in the Probate Code between the interests of a debtor's creditors and heirs.

RENEWAL OF JUDGMENT

Under existing law, a judgment for support may be renewed. Renewal has no effect on the enforceability of the judgment. It merely provides a mechanism for updating the amount owed on the judgment (to reflect accrued interest and installments that have come due).²³ Renewal for that limited purpose should be available for all judgments entered under the Family Code, regardless of whether a judgment is subject to the ten-year enforcement period.

ENFORCEMENT OF FAMILY CODE JUDGMENT IN LIMITED CIVIL CASE

Code of Civil Procedure Section 580 was amended in connection with the unification of the trial courts to specifically provide that a Family Code order cannot be enforced as part of a limited civil case.

That limitation interferes with the availability of two judgment enforcement procedures that could otherwise be used to enforce a Family Code judgment in a limited civil case:

- (1) A judgment creditor may bring suit against a third person in possession or control of property in which a judgment debtor has an interest, or against a third

22. *Embree v. Embree*, 125 Cal. App. 4th 487, 495, 22 Cal. Rptr. 3d 782 (2004).

23. Fam. Code § 4502.

person who is indebted to the judgment debtor, in order to satisfy the judgment.²⁴ If the amount in controversy is \$25,000 or less, such a suit would be classified as a limited civil case.²⁵

- (2) A judgment creditor may file a lien on a debtor's cause of action in a pending civil case, including a limited civil case. The judgment creditor can then intervene in the case and the court may order satisfaction of the judgment from assets at issue in the case.²⁶

The Commission sees no reason to deny a family law judgment creditor access to these remedies. For that reason, the proposed law would amend Code of Civil Procedure Section 580 to delete the limitation on enforcement of a Family Code judgment in a limited civil case.

Other judgment enforcement procedures, which do not give rise to enforcement in a limited civil case, would not be affected by the proposed change. Those procedures fall into one of the following categories: (1) a procedure conducted without a court hearing,²⁷ (2) a procedure conducted in the same court that entered the judgment to be enforced (or in a

24. Code Civ. Proc. §§ 708.210-708.270.

25. Code Civ. Proc. § 86(a)(9).

26. Code Civ. Proc. §§ 708.410-708.480.

27. Code Civ. Proc. §§ 697.310-697.410 (judgment lien on real property), 697.510-697.670 (judgment lien on personal property), 699.010-701.830 (execution), 708.010-708.030 (written interrogatory or inspection demand), 712.010-716.030 (enforcement of writ of possession or sale).

court of the same or higher jurisdiction),²⁸ or (3) a special proceeding under the Probate Code.²⁹

28. Code Civ. Proc. §§ 708.110-708.205 (debtor examination), 708.310-708.320 (charging order), 708.510-708.560 (assignment order), 708.610-708.630 (appointment of receiver), 708.710-708.795 (enforcement against obligation of public entity), 708.910-708.930 (enforcement against franchise), 709.020 (action against nonvested property interest).

29. Code Civ. Proc. §§ 709.010 (enforcement against debtor's interest as beneficiary of trust), 709.030 (enforcement against debtor's interest in guardianship or conservatorship estate).

PROPOSED LEGISLATION

Code Civ. Proc. § 580 (amended). Relief granted in limited civil case

SEC. _____. Section 580 of the Code of Civil Procedure is amended to read:

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that ~~which he or she shall have~~ demanded in ~~his or her~~ the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction.

(3) A determination of title to real property.

(4) ~~Enforcement of an order under the Family Code.~~

~~(5) Declaratory relief, except as authorized by Section 86.~~

Comment. Section 580 is amended to remove the limitation on the enforcement of a Family Code judgment in a limited civil case. The change would affect two judgment enforcement procedures: (1) a creditor's suit (Sections 708.210-708.270), and (2) a lien filed against a judgment debtor's interest in a pending case (Sections 708.410-708.480).

Other judgment enforcement procedures, which do not give rise to enforcement in a limited civil case, are not affected by the amendment. Those procedures fall into one of the following categories:

(1) A procedure conducted without a court hearing. See Sections 697.310-697.410 (judgment lien on real property), 697.510-697.670 (judgment lien on personal property), 699.010-701.830 (execution),

708.010-708.030 (written interrogatory or inspection demand), 712.010-716.030 (enforcement of writ of possession or sale).

(2) A procedure conducted in the same court that entered the judgment to be enforced (or in a court of the same or higher jurisdiction). See Sections 708.110-708.205 (debtor examination), 708.310-708.320 (charging order), 708.510-708.560 (assignment order), 708.610-708.630 (appointment of receiver), 708.710-708.795 (enforcement against obligation of public entity), 708.910-708.930 (enforcement against franchise), 709.020 (action against nonvested property interest).

(3) A special proceeding under the Probate Code. See Sections 709.010 (enforcement against debtor's interest as beneficiary of trust), 709.030 (enforcement against debtor's interest in guardianship or conservatorship estate).

The changes to subdivision (a) are not substantive.

Fam. Code § 290 (amended). Enforcement of judgment

SEC. _____. Section 290 of the Family Code is amended to read:

290. ~~Subject to Section 291,~~ a A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.

Comment. Section 290 is amended to reflect the fact that new Section 291 does not limit the enforcement of a judgment or order made or entered pursuant to this code.

Fam. Code § 291 (repealed). Enforcement of judgment for possession or sale of property

SEC. _____. Section 291 of the Family Code is repealed.

~~291. A judgment or order for possession or sale of property made or entered pursuant to this code is subject to the period of enforceability and the procedure for renewal provided by Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.~~

Comment. Section 291 is repealed. New Section 291 provides a general rule for enforcement of a judgment under this code.

Fam. Code § 291 (added). Enforcement of judgment

SEC. _____. Section 291 is added to the Family Code, to read:

291. (a) A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied.

(b) A judgment described in this section is exempt from any requirement that a judgment be renewed. Failure to renew a judgment described in this section has no effect on the enforceability of the judgment.

(c) A judgment described in this section may be renewed pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. An application for renewal of a judgment described in this section, whether or not payable in installments, may be filed:

(1) If the judgment has not previously been renewed as to past due amounts, at any time.

(2) If the judgment has previously been renewed, the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.

(d) In an action to enforce a judgment for child, family, or spousal support, the defendant may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment that is owed to the state.

(e) Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor.

(f) On or before January 1, 2008, the Judicial Council shall publish self-help materials that include: (1) a description of

the remedies available for enforcement of a judgment under this code, and (2) practical advice on how to avoid disputes relating to the enforcement of a support obligation. The self-help materials shall be made available to the parties in a proceeding under this code.

(g) As used in this section, “judgment” includes an order.

Comment. Subdivisions (a)-(c) of Section 291 continue the substance of former subdivisions (a)-(b) of Section 4502 and generalize the substance of those provisions so that it applies to any judgment or order for the payment of money or the possession or sale of property that is made or entered under this code.

The reference in former Section 4502(a) to an order for reimbursement under Section 17402 is not continued. This is not a substantive change. Section 291 applies to any judgment or order for payment of money made or entered under this code. This includes an order to pay money under Section 17402.

Subdivision (d) continues former Section 4502(c) without substantive change.

Subdivision (e) is new. It is consistent with a recent appellate decision that stated, in dictum, that Family Code Section 4502 “does not address the procedural requirements for reaching the assets of a judgment debtor after that debtor’s death.” *Embree v. Embree*, 125 Cal. App. 4th 487, 495, 22 Cal. Rptr. 3d 782 (2004).

Subdivision (g) makes clear that the section applies to both judgments and orders.

Fam. Code § 4502 (repealed). Enforcement of support judgment

SEC. _____. Section 4502 of the Family Code is repealed.

~~4502. (a) Notwithstanding any other provision of law, a judgment for child, family, or spousal support, including a judgment for reimbursement that includes, but is not limited to, reimbursement arising under Section 17402 or other arrearages, including all lawful interest and penalties computed thereon, is enforceable until paid in full and is exempt from any requirement that judgments be renewed.~~

~~(b) Although not required, a judgment described in subdivision (a) may be renewed pursuant to the procedure applicable to money judgments generally under Article 2~~

~~(commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. As provided in subdivision (a), the option of renewing the judgment has no effect on the enforceability of the amount due. An application for renewal of a judgment described in subdivision (a), whether or not payable in installments, may be filed:~~

~~(1) If the judgment has not previously been renewed as to past due amounts, at any time.~~

~~(2) If the judgment has previously been renewed the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.~~

~~(c) In an action to enforce a judgment for child, family, or spousal support, the defendant may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment owed to the state.~~

Comment. Section 4502 is repealed. Its substance is continued in Section 291. New Section 4502 provides a cross-reference to Section 291.

Fam. Code § 4502 (added). Enforcement of support judgment

SEC. _____. Section 4502 is added to the Family Code, to read:

4502. The period for enforcement and procedure for renewal of a judgment or order for child, family, or spousal support is governed by Section 291.

Comment. Section 4502 provides a cross-reference to the general rule on enforcement of a judgment under the Family Code. Section 291 continues the substance of former Section 4502.
